IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 32716 of 2007 (T)

PETITIONER:

SMT. SULAIKHA MALLIYOTH,
MARVA, PANNIYOOR, THALASSERY.

BY ADV. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.R.LEELA

RESPONDENTS:
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1. **THE REVENUE DIVISIONAL OFFICER,**
   REVENUE DIVISIONAL OFFICE, THALASSERY.

2. **THE TAHSILDAR,**
   THALASSERY TALUK, THALASSERY.

BY GOVT. PLEADER, SRI.K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON 14/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 32716 OF 2007 t
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Dated this the 14th November, 2007

J U D G M E N T

Petitioner seeks to quash Exts. P1, P2 and P4 and direct the respondents to re-measure the building in the light of the judgment of this Court in W.A. No. 173/06. It is stated that the petitioner's husband had constructed a residential house which was inspected by the 2nd respondent and on the basis that the plinth area was 281 sq.m., Ext. P1 order was passed levying building tax of Rs.4,800/-. On the very same basis, by Ext. P2, luxury tax was also imposed at the rate of Rs.2000/- per annum. Petitioner submits that both building tax and luxury tax have been imposed on the basis that the plinth area includes car parking area also. Though an appeal was filed, that was rejected by Ext. P4 as belated. It is in the aforesaid circumstances this writ petition has been filed.

2. It is true that this Court had in the aforesaid judgment in ***Jayakumar v. State of Kerala*** {2006 (2) KLT

34} accepted the contention that the plinth area for the purpose of building tax does not include the area of car parking. However, the petitioner should have contested the matter before the assessing authority or the appellate authority. This has not been done in this case. Therefore, it may not be proper for this Court now to set aside the orders of assessment or the appellate order on that ground.

3. However, it will be open to the petitioner to seek rectification of the order of assessment by filing an appropriate application before the assessing authority, in terms of Section 15 of the Kerala Building Tax Act. If an application is filed by the petitioner, orders thereon shall be passed by the Assessing Authority, at any rate within 3 weeks of receipt thereof, with notice to the petitioner.

ANTONY DOMINIC
JUDGE

jan/-